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C O N F I D E N T I A L SECTION 01 OF 02 ZAGREB 001047

SIPDIS

E.O. 12958: DECL: 05/12/2013

TAGS: [PREL](#) [PGOV](#) [PGOV](#) [HR](#) [UNSC](#) [HRPREL](#) [UNSC](#) [NATO](#)

SUBJECT: CROATIA/ICC: STILL TAKING A TOUGH LINE ON ARTICLE 98 NEGOTIATIONS

REF: A. STATE 92865

[B](#). 02 STATE 253531

CLASSIFIED BY: POLOFF ROB SILBERSTEIN, REASONS 1.5 (B) AND (D)

SUMMARY

[1](#)1. (C) THE AMBASSADOR ON MAY 12 PRESSED DEPUTY FOREIGN MINISTER IVAN SIMONOVIC TO CONCLUDE AN ARTICLE 98 OR OTHER NON-SURRENDER AGREEMENT. SHOULD CROATIA FAIL TO DO SO BY
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JULY 1 WHEN THE AMERICAN SERVICEMEMBERS PROTECTION ACT COMES INTO EFFECT, IT STANDS TO PUT AT RISK OVER USD 19 MILLION IN FMF AND IMET ASSISTANCE (FY00 TO FY03) KEY TO ITS NATO INTEGRATION ASPIRATIONS. DFM SIMONOVIC SAID THAT ICTY LINKAGES DURING AN ELECTION YEAR -- PARTICULARLY WHEN NEW INDICTMENTS ARE EXPECTED -- AND THE GOC'S DESIRE NOT TO GET OUT IN FRONT OF THE EU MADE NEGOTIATING AN AGREEMENT ALMOST IMPOSSIBLE FOR THE GOC.

[2](#)2. (C) SIMONOVIC ASKED IF WASHINGTON MIGHT GRANT CROATIA AN ASPA WAIVER -- EVEN FOR SIX MONTHS -- PARTICULARLY, HE CLAIMED, SINCE THE GOC WAS SET TO UNDERTAKE A NUMBER OF PROMISING, BUT POLITICALLY DIFFICULT, REFUGEE RETURN INITIATIVES. WHILE THE AMBASSADOR URGED SIMONOVIC TO IMPLEMENT THE GOC'S REFUGEE RETURN AGENDA (DESCRIBED SEPTEL), THERE COULD BE NO LINKAGE BETWEEN THOSE EFFORTS AND AN ASPA WAIVER. THE AMBASSADOR STRESSED THAT THE GOC HAD TO FIND A WAY TO BALANCE ITS INTERESTS AND TO MANAGE LINKAGES TO ICTY. RESPONDING TO SIMONOVIC, THE AMBASSADOR SAID THAT HE HAD NO INDICATION THAT THE EU WAS WORKING ON AN ARTICLE 98 INITIATIVE FOR THESSALONIKI. END SUMMARY.

PRESSING THE GOC ON ARTICLE 98

[3](#)3. (C) THE AMBASSADOR, ACCOMPANIED BY DCM AND POLOFF, CALLED ON DEPUTY FOREIGN MINISTER IVAN SIMONOVIC ON MAY 12 TO PRESS THE GOC TO CONCLUDE AN ARTICLE 98 OR NON-SURRENDER AGREEMENT. THE AMBASSADOR BRIEFED THE DFM ON PROGRESS TO DATE -- 34 AGREEMENTS SIGNED AND SERIOUS NEGOTIATIONS UNDERWAY WITH SOME OF CROATIA'S NEIGHBORS. TALKS WITH THE EU HAVE BEEN
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FRUITFUL, BUT SCOPE OF COVERAGE ISSUES HAVE PREVENTED THE U.S. FROM REACHING AN EU-MODEL AGREEMENT.

[4](#)4. (C) THE AMBASSADOR NOTED THAT PRIME MINISTER RACAN AND OTHER GOC OFFICIALS TOLD HIM IN 2002 THAT THEY WISHED TO REACH AN ARTICLE 98 AGREEMENT, BUT THAT CROATIA DID NOT WANT TO GET OUT IN FRONT OF THE EU AND, THEREFORE, PREFERRED TO WAIT FOR AN EU-MODEL AGREEMENT. THE AMBASSADOR STRESSED THAT WHAT WAS AN UNDERSTANDABLE POSITION LAST YEAR NOW MUST BE RECONSIDERED: BECAUSE OF THE AMERICAN SERVICEMEMBERS PROTECTION ACT (ASPA), CROATIA PUTS AT RISK OVER USD 19 MILLION IN FMF AND IMET ASSISTANCE FROM FY 00 THROUGH FY 03. CONSIDERING THE LIMITED SCOPE IN THE CROATIAN DEFENSE BUDGET FOR NEW ACQUISITIONS, THIS ASSISTANCE IS CRITICAL FOR KEEPING CROATIA'S NATO INTEGRATION ASPIRATIONS ON TRACK. NOBODY ELSE WAS GIVING THAT NEEDED SUPPORT.

[5](#)5. (C) THE AMBASSADOR ADDED THAT THE GOC NEEDED TO REALIZE THAT THE COUNTRIES THAT CROATIA IS LOOKING TO PAVE THE WAY FOR IT WITHIN THE EU ARE UNAFFECTED BY ASPA. MANY ARE EXEMPT OF THE EFFECTS OF ASPA BECAUSE OF THEIR NATO MEMBERSHIP OR, LIKE AUSTRIA, DO NOT RECEIVE FMF OR IMET ASSISTANCE. THE DFM AGREED THAT CROATIA WAS IN A DIFFICULT AND ISOLATED POSITION. IT WAS AN "UNPLEASANT FEELING" TO BE A PRIMARY "TARGET," ALBEIT INADVERTENTLY, OF THE ASPA. UNFORTUNATELY, THE DFM SAID, THE GOC WAS HAMSTRUNG. IN AN ELECTION YEAR, THE SPECTER OF NEW ICTY INDICTMENTS AND DOMESTIC LINKAGES BETWEEN THE ICC AND ICTY MAKE AN AGREEMENT ALMOST IMPOSSIBLE. THE TYPE OF AGREEMENT, BE IT THE STANDARD OR UNILATERAL ARTICLE 98 AGREEMENT OR THE "GENERIC" NON-SURRENDER AGREEMENT, DID NOT MATTER.

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A SIX-MONTH WAIVER PLEASE

16. (C) SIMONOVIC LAUNCHED INTO A DETAILED DESCRIPTION OF A NUMBER OF NEW INITIATIVES -- LARGELY FOCUSED ON REFUGEE RETURN -- THAT HE SAID THE GOC PLANNED TO UNDERTAKE IN COMING MONTHS (SEPTEL). THESE INITIATIVES, HE ARGUED, WERE IMPORTANT FOR CROATIA'S EU AND NATO MEMBERSHIP ASPIRATIONS AND FOR REGIONAL STABILITY, BUT HAD THEIR OWN POLITICAL COST FOR THE GOC. IN LIGHT OF THE UPCOMING ELECTIONS, WHICH ARE LIKELY TO BE SCHEDULED IN NOVEMBER, AND THE DIFFICULTY FOR THE GOC OF IMPLEMENTING THOSE NEW INITIATIVES, WOULD IT BE POSSIBLE FOR WASHINGTON TO CONSIDER ISSUING A SIX-MONTH WAIVER ASPA FOR CROATIA, SIMONOVIC ASKED. ADDITIONALLY, SIMONOVIC ASKED IF WE HAD RECEIVED ANY INDICATION THAT THE EU LAUNCH AN INITIATIVE ON ARTICLE 98 AT THE UPCOMING EU SUMMIT IN THESSALONIKI. (HE DID NOT ELABORATE.)

17. (C) THE AMBASSADOR STRESSED THAT THERE COULD BE NO LINKAGE BETWEEN OTHER CROATIA FOREIGN POLICY INITIATIVES AND OUR NEED TO CONCLUDE A BILATERAL NON-SURRENDER AGREEMENT. THERE WAS

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ACTION IO-00

INFO	LOG-00	NP-00	AMAD-00	ACQ-00	CIAE-00	INL-00	DODE-00
	PERC-00	DS-00	EUR-00	FBIE-00	VC-00	TEDE-00	INR-00
	LAB-01	VCE-00	NSAE-00	OIC-02	PM-00	SP-00	IRM-00
	PMB-00	DSCC-00	PRM-00	DRL-01	G-00	NFAT-00	SAS-00
	SWCI-00	/004W					

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P 121702Z MAY 03
FM AMEMBASSY ZAGREB
TO SECSTATE WASHDC PRIORITY 0167
INFO EUROPEAN POLITICAL COLLECTIVE PRIORITY

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LITTLE POINT IN DISCUSSING WHAT SHORT-TERM WAIVERS FOR ONGOING NEGOTIATIONS MIGHT BE POSSIBLE BECAUSE CROATIA HASN'T EVEN BEGUN TO NEGOTIATE. IN ANY CASE, ALL INDICATIONS WERE THAT ASPA WAIVERS WOULD BE FEW, AND, IF ANY WERE TO BE ISSUED, NATO INVITEES WOULD HAVE PRIORITY BEFORE CROATIA. THE AMBASSADOR STRESSED THAT NO DECISION HAD BEEN TAKEN ON WHO, IF ANYONE WOULD GET A WAIVER.

18. (C) THE AMBASSADOR TOLD SIMONOVIC THAT WHILE WE BELIEVED
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CROATIA'S EU AND ICTY CONCERNS WERE UNDERSTANDABLE, THEY ALSO HAD TO BE PUT PERSPECTIVE. OUR SENSE WAS THAT WE WOULD SUCCESSFULLY CONCLUDE DISCUSSIONS WITH THE EU ON ARTICLE 98 WELL BEFORE BRUSSELS WOULD CONSIDER CROATIA'S EU MEMBERSHIP. GOOD ARGUMENTS DIFFERENTIATED THE ICTY AND THE ICC; IT WOULD BE UP TO THE GOC TO CRAFT A MESSAGE THAT WOULD RESONATE WITH THE CROATIAN PUBLIC. THE AMBASSADOR ADDED THAT HE HAD RECEIVED NO INFORMATION THAT THE EU WOULD ALTER ITS POSITION ON ARTICLE 98 IN THESSALONIKI.

19. (C) THE AMBASSADOR AGAIN URGED DFM SIMONOVIC TO REVIEW THE VARIOUS AGREEMENT TEXTS WE MADE AVAILABLE TO THE GOC TO BEGIN NEGOTIATIONS WITH US ON AN AGREEMENT. SIMONOVIC WAS NOT OPTIMISTIC, SAYING THAT, UNDER PRESENT CONDITIONS, HE COULD NOT SEE THE GOC AGREEING TO A NON-EXTRADITION AGREEMENT, IRRESPECTIVE OF THE COST.

COMMENT

110. (C) SIMONOVIC'S GAMBIT OF LINKING AN ASPA WAIVER TO GOC PROGRESS ON CORE REGIONAL STABILITY ISSUES OF IMPORTANCE TO US WAS A GOOD TRY FROM THE CROATIAN PERSPECTIVE. THE GOC DOES NOT WANT TO EXPEND WHAT IT IMAGINES WOULD BE SIGNIFICANT POLITICAL CAPITAL -- BOTH DOMESTICALLY AND IN TERMS OF ITS RELATIONSHIP WITH THE EU -- TO SIGN A NON-SURRENDER AGREEMENT.

111. (C) NOW THAT WE DISPENSED WITH THE GOC'S MANEUVER, HOWEVER, IT REMAINS TO BE SEEN WHETHER OR NOT THE GOC STICKS TO THE NO-NEGOTIATIONS POLICY THAT SIMONOVIC DESCRIBED. THE
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GOC KNOWS WHAT THE STAKES ARE AND HOW LITTLE CHANCE CROATIA HAS FOR A WAIVER. WE WILL CONTINUE TO PRESS THE GOC TO FIND A WAY TO BALANCE ITS INTERESTS AND BEGIN TO NEGOTIATE A NON-SURRENDER AGREEMENT WITH US. PROSPECTS CANNOT BE

CONSIDERED GOOD. PM RACAN IS NEVER EAGER TO RISK DOMESTIC PROBLEMS OVER ICTY, AND SIMONOVIC INADVERTENTLY REITERATED THAT THE GOC'S EU BID COUNTS FOR MORE THAN NATO -- IN SPITE OF REPEATING LEADING REFERENCES BY THE AMBASSADOR, SIMONOVIC NEVER ONCE REFERRED TO CROATIA'S MAP PROCESS AS AN IMPORTANT GOC PRIORITY.
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